UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-20665-CR-HUCK/SIMONTON(s)
15 U.S.C. § 78j(b)
15 U.S.C. § 78ff(a)
17 C.F.R. § 240.10b-5
18 U.S.C. § 371
18 U.S.C. § 2

UNITED STATES OF AMERICA

v.

CLARK MITCHELL,

Defendant.
_____/

SUPERSEDING INFORMATION

COUNT 1
SECURITIES FRAUD
(15 U.S.C. §§ 78j(b) and 78ff(a);
17 C.F.R. § 240.10b-5; and
18 U.S.C. § 2)

At all times material to this Information:

GENERAL ALLEGATIONS

1. Mutual Benefits Corp. ("MBC") was a business with principal offices in the Southern District of Florida, initially at 2881 E. Oakland Park Blvd., Suite 200, Fort Lauderdale, Florida 33306, and subsequently at 200 E. Broward Blvd., 10th Floor, Fort Lauderdale, Florida 33301.

2. MBC was in the business of selling viatical and life settlements to the general public.

3. A viatical settlement is a transaction in which a terminally ill person sells the death benefit of his or her life insurance policy to a third party in return for a lump-sum cash payment, which is a discounted percentage of the policy's face value.

4. A life settlement is a transaction which is identical to a viatical settlement, except the seller of the insurance death benefit is not terminal, but instead is usually a senior citizen.

5. Viatical and life settlements are illiquid investments that pay upon death of the insured individual. All premiums due prior to the death of the insured must be paid, in full and on a timely basis, to prevent additional costs or a lapse. If an insurance policy lapses for any reason, such as failure to properly pay premiums, the policy's death benefit and any investment dependent on that benefit may be lost.

6. In the sale and purchase of viatical and life settlements, the assessment of an insured's life expectancy determines: (i) investors' anticipated term of investment in the insured's policy; (ii) the fixed return paid on that investment; and (iii) the amount of money to be held in escrow for payments of anticipated future premiums.

7. An investor in a viatical or life settlement only realizes a profit if, when the insured dies, the policy benefit is greater than the purchase price, adjusted for any post-purchase costs.

8. Between in or around 1995 and May 2001, defendant **CLARK MITCHELL** was a licensed medical doctor engaged to perform services for MBC in connection with their determination of life expectancies.

9. Participants in MBC's viatical and life settlement program were solicited to invest money into MBC's common enterprise upon the promise of profits. These profits were to be derived solely from MBC's purported ability to identify, acquire rights to, and collect valuable insurance

policy death benefits. As a result, the viatical and life settlements sold by MBC are securities, which are subject to regulation by the U.S. Securities and Exchange Commission and the federal securities laws.

10. Peter Lombardi was a founding partner and sole shareholder of MBC. In his daily activities, Peter Lombardi supervised MBC's accounting department and falsely represented himself to be MBC's principal executive officer to the investing public.

THE SCHEME AND ARTIFICE

11. Between at least 1995, and continuing to at least May 2001, in the Southern District of Florida, and elsewhere, the defendant,

CLARK MITCHELL,

together with others, did knowingly, willfully, and unlawfully, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, directly and indirectly, use and employ manipulative and deceptive devices and contrivances by: (a) employing a device, scheme, and artifice to defraud; (b) making or causing others to make untrue statements of material facts, and omitting to state or causing others to omit to state, material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which would and did operate as a fraud and deceit upon others, in connection with the purchase and sale of securities, that is, the purchase of investment interests in viatical and life settlements.

PURPOSE OF THE SCHEME AND ARTIFICE

12. The purpose of the scheme and artifice was for the defendant and his accomplices to unjustly enrich themselves by misappropriating investor funds and by making materially false representations and by omitting to state material facts concerning, among other things, the accuracy and reliability of life expectancy determinations, the ability to continue payment of anticipated premium obligations, the identity of MBC's true management personnel, and the regulatory and criminal histories of MBC's principals.

MANNER AND MEANS OF THE SCHEME AND ARTIFICE

The manner and means by which the defendant and his accomplices sought to accomplish the scheme and artifice included, but were not limited to, the following:

13. Peter Lombardi, his accomplices, and others, directly and indirectly, fraudulently offered and sold investment interests in MBC viatical and life settlements to the general public, raising more than $1.3 billion from more than 30,000 investors worldwide, resulting in investor losses of approximately $956 million.

14. To perpetrate the scheme and artifice, Peter Lombardi was installed by his accomplices as the titular President of MBC, to conceal from investors and others that the true controlling principal of MBC was an individual who had been previously federally convicted of mail and wire fraud, as well as enjoined by a United States District Court from committing further violations of the anti-fraud provisions of the federal securities laws.

15. To further perpetrate the scheme and artifice, Peter Lombardi, his accomplices, and others solicited investors through an international network of sales agents and marketing directors, who reported, directly or indirectly, to Peter Lombardi and MBC's principals. Peter Lombardi, his

accomplices, and others, also solicited investors through an Internet website, investment seminars held around the nation, advertisements, and by telephone.

16. MBC's sales agents and marketing directors, acting under the supervision of Peter Lombardi, his accomplices, and others, falsely represented to investors that MBC had a strong track record of accurately predicting life expectancies.

17. MBC's sales agents and materials touted MBC's success in predicting the life expectancy of terminally ill and elderly individuals, assuring investors that each insured individual's medical condition was reviewed by an "independent" state licensed physician who would determine each insured's life expectancy.

18. From in or around 1995 to in or around May 2001, **CLARK MITCHELL** was a licensed medical doctor engaged by MBC to provide these "independent" determinations of life expectancy. **CLARK MITCHELL** memorialized these life expectancy determinations in letters or affidavits that MBC mailed to investors.

19. The letters and affidavits completed by **CLARK MITCHELL** falsely assured investors that he had reviewed the insured's medical records to make an "independent" assessment of the insured's life expectancy. In truth, all life expectancy determinations were assigned by an undisclosed MBC principal, who was dictating the life expectancy determinations to **CLARK MITCHELL.**

20. During the period of **CLARK MITCHELL**'s employment, MBC raised more than $439 million from over eighteen thousand (18,000) investors, who ultimately lost approximately $367 million.

21. MBC's sales agents and marketing directors, acting under the supervision of Peter Lombardi, his accomplices, and others, directly and indirectly, disseminated and caused others to disseminate, written sales materials and other documents to investors to solicit their funds. Investors received MBC's sales materials and documents by a commercial overnight courier service, the United States Postal Service, through an online web-site, and directly from MBC's sales agents and marketing directors.

22. To compensate for inadequate premium reserves, Peter Lombardi, his accomplices, and others, pooled monies in various premium escrow accounts, and used premium monies obtained from recently sold viatical and life settlements to pay premium obligations on older policies that failed to mature within the represented life expectancy or were otherwise deficient.

23. To induce investors to purchase investment interests in viatical and life settlements, Peter Lombardi, his accomplices, and others, provided, and caused others to provide, sales materials and other documents to investors that contained numerous materially false statements and omissions of material facts, and themselves made, and caused other to make, numerous materially false statements and omissions to investors, including, among others, the following:

Materially False Statements

a. That the life expectancies of insured individuals, whose policies were sold to investors, were determined by an "independent" state licensed physician after review of the insured's medical condition, when in reality an undisclosed MBC principal was assigning life expectancies and dictating those determinations to physicians hired by MBC;

b. That the majority of the viatical and life settlements sold by MBC matured within the assigned life expectancy, when in reality approximately eighty percent (80%) of the viatical and life

settlements sold by MBC failed to mature, and only approximately five percent (5%) matured within the assigned life expectancy;

c. That, for each policy, there were sufficient funds escrowed to pay the anticipated premium costs for the life expectancy of the insured, when in reality there were insufficient funds escrowed to pay these premium costs;

d. That MBC's viatical and life settlements were "safe" investments, offering a level of risk comparable to a certificate of deposit, when in reality, as a result of the conditions described above, investors were exposed to substantial risk;

Omissions of Material Fact

e. That an undisclosed controlling principal, who had been previously federally convicted of mail and wire fraud, as well as enjoined by a United States District Court from committing further violations of the anti-fraud provisions of the federal securities laws, was a principal of MBC;

f. That this same undisclosed controlling principal, who had been previously federally convicted of mail and wire fraud, as well as enjoined by a United States District Court from committing further violations of the anti-fraud provisions of the federal securities laws, was assigning the life expectancies of insured individuals, whose policies were sold by MBC to investors;

g. That a second principal of MBC was enjoined by a United States District Court from committing further violations of the anti-fraud provisions of the federal securities laws;

h. That to compensate for inadequate premium reserves, Peter Lombardi, his accomplices, and others, pooled monies in various premium escrow accounts, and used monies

obtained from recently sold viatical and life settlements to pay premium obligations on older policies that failed to mature within the represented life expectancy or were otherwise deficient; and

i. That the MBC's principals were misappropriating investor funds for their own personal use and benefit.

SECURITIES TRANSACTION

24. On or about October 16, 1998, **CLARK MITCHELL**, Peter Lombardi, and their accomplices caused MBC to sell a life or viatical settlement for $30,000 to R.T., an investor located in Tampa, Florida, by, among other things, disseminating, or causing the dissemination of, materially false and misleading information, which also omitted to state material facts, concerning, among other things, the accuracy and reliability of life expectancy determinations, statements from **CLARK MITCHELL** claiming that he had determined the insured's life expectancy, the payment of anticipated premium obligations, the identity of MBC's true management, and the regulatory and criminal histories of MBC's principals.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff(a); Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNT 2
CONSPIRACY TO DEFRAUD THE UNITED STATES AND TO COMMIT HEALTH CARE FRAUD
(18 U.S.C. § 371)

At all times material to this Information:

GENERAL ALLEGATIONS

1. Community Healthcare/CenterOne, Inc. (f/k/a American Aids Foundation, Inc., Ryan White Foundation for Medical Treatment, Inc., Community Healthcare of Broward, Inc., and CenterOne, Inc.) (collectively, "CenterOne"), was located at 2817 E. Oakland Park Blvd., Suite 302, Fort Lauderdale, Florida 33306. CenterOne was in business from as early as in or around December 1996 and continued through in or around April 2006.

2. The CenterOne clinic specialized in the treatment of patients diagnosed with Human Immunodeficiency Virus ("HIV"). HIV is a viral infection that attacks a patient's immune system.

3. **CLARK MITCHELL** was a medical doctor licensed to practice medicine in the State of Florida under license number 66097. **CLARK MITCHELL** was employed as the medical director of CenterOne from in or around December 1996 through in or around May 2001.

The Medicare Program

4. The Medicare Program ("Medicare") was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were set forth by statute and by federal regulations under the auspices of the United States Department of Health and Human Services, through its agency, the Centers for Medicare and Medicaid Services ("CMS"), which prior to June 15, 2001 was known as

the Health Care Financing Administration. Individuals who received benefits under Medicare were commonly referred to as Medicare "beneficiaries."

5. Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

6. The Medicare Part B program was a medical insurance program that covered, among other things, the cost of certain medically necessary services, medical testing and medications provided and ordered by physicians, clinics, and other qualified health care providers. The Medicare Part B program was administered in Florida by First Coast Service Options ("FCSO"), a company that contracted with CMS to receive, adjudicate, process, and pay certain Part B claims.

7. Among other benefits, Medicare paid reimbursement claims to physicians, clinics, and other qualified health care providers in an amount directly related to the level of care offered to the covered Medicare beneficiary. This level of care was often determined by the amount of time spent by the treating physician with the Medicare beneficiary. For example, a comprehensive medical examination required a longer patient visit and, therefore, was reimbursed at a higher rate than a more abbreviated consultation, such as a routine follow-up visit.

8. To file claims with Medicare to obtain reimbursement for services provided, physicians, clinics, and other health care providers were required to apply for and obtain a "provider number." Claims submitted to Medicare were required to set forth the beneficiary's name and Medicare identification number, the services that had been performed for the beneficiary, the date the services were provided, the cost of the services, and the name and identification number of the physician or other health care provider who had ordered the services.

9. For services purportedly rendered from in or around May 1997 through in or around August 2002, CenterOne billed Medicare under the provider number assigned to **CLARK MITCHELL**, 21104.

THE CONSPIRACY

10. From as early as December 1996, and continuing through at least May 2001, in the Southern District of Florida, and elsewhere, the defendant,

CLARK MITCHELL,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with others known and unknown:

(A) to defraud the United States by impairing, impeding, obstructing, and defeating, through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration and oversight of Medicare; and

(B) to violate Title 18, United States Code, Section 1347, by knowingly and willfully executing, and attempting to execute, a scheme and artifice to defraud and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, a health care benefit program affecting commerce as defined in Title 18, United States Code, Section 24(b), that is, Medicare, in connection with the delivery of and payment for health care benefits, items, and services.

PURPOSE OF THE CONSPIRACY

11. It was the purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by: (a) submitting and causing the submission of false and fraudulent

claims to Medicare; and (b) concealing the submission of false and fraudulent claims to Medicare, and the receipt and transfer of fraud proceeds.

MANNER AND MEANS USED TO ACCOMPLISH THE CONSPIRACY

The manner and means by which the defendant and his co-conspirators sought to accomplish the purpose and objects of the conspiracy included, but were not limited to, the following:

12. As CenterOne's medical director and the primary treating physician of many of the clinic's patients, **CLARK MITCHELL** met with patients, provided medical treatment, supervised administrative staff, and subscribed Medicare billing documentation.

13. To maximize the volume of patients treated at CenterOne, **CLARK MITCHELL** and his co-conspirators scheduled multiple patients, many of whom were Medicare beneficiaries, for each fifteen (15) minute period of the work day.

14. **CLARK MITCHELL**, or another individual acting as CenterOne's treating physician, conducted a brief patient consultation with each scheduled patient who appeared for his/her appointment.

15. Following patient consultations, **CLARK MITCHELL** and his co-conspirators routinely created false documents grossly inflating the amount of time spent with each patient.

16. In instances where patients failed to appear for the scheduled medical appointment, **CLARK MITCHELL** or his co-conspirators routinely created false documents indicating that the Medicare beneficiary received an extensive consultation.

17. **CLARK MITCHELL** and his co-conspirators used these false documents to support fraudulent Medicare claims seeking inflated reimbursement payments for extensive medical examinations when, in truth, those examinations were very brief in duration or did not occur.

18. **CLARK MITCHELL** and his co-conspirators fabricated notes and related documents, falsely stating that Medicare beneficiaries had received specific treatments, therapies, and medications, when, in truth, the beneficiaries had not received the treatments, therapies, and medications indicated.

19. **CLARK MITCHELL** and his co-conspirators submitted and caused the submission of numerous false and fraudulent claims to Medicare on behalf of CenterOne, seeking reimbursement for the cost of infusions, injections, medications, and other items and services that were not provided, not provided as claimed, or were not medically necessary. As a result of the submission of these claims, Medicare paid in excess of $507,000 into a bank account designated by **CLARK MITCHELL** and his co-conspirators.

OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY

In furtherance of the conspiracy, and to accomplish its purpose and objects, at least one of the co-conspirators committed, or caused to be committed, in the Southern District of Florida and elsewhere, at least one of the following overt acts, among others:

1. In or around June 1997, **CLARK MITCHELL** submitted an application to Medicare to obtain a Group provider number for CenterOne.

Medicare Beneficiary C.C.

2. On or about July 31, 2000, **CLARK MITCHELL** signed a Medicare superbill that falsely indicated that Medicare beneficiary C.C. received a comprehensive medical examination that day.

3. On or about August 3, 2000, **CLARK MITCHELL** and his co-conspirators caused the submission of a false claim to Medicare on behalf of CenterOne, seeking reimbursement for a comprehensive medical examination purportedly provided to C.C. on or about July 31, 2000.

Medicare Beneficiary D.M.

4. On or about July 31, 2000, **CLARK MITCHELL** signed a Medicare superbill that falsely indicated that Medicare beneficiary D.M. received a comprehensive medical examination that day.

5. On or about August 3, 2000, **CLARK MITCHELL** and his co-conspirators caused the submission of a false claim to Medicare on behalf of CenterOne, seeking reimbursement for a comprehensive medical examination purportedly provided to D.M. on or about July 31, 2000.

Medicare Beneficiary M.F.

6. On or about November 12, 2000, **CLARK MITCHELL** signed a Medicare superbill that falsely indicated that Medicare beneficiary M.F. received a comprehensive medical examination that day.

7. On or about December 20, 2000, **CLARK MITCHELL** and his co-conspirators caused the submission of a false claim to Medicare on behalf of CenterOne, seeking reimbursement for a comprehensive medical examination purportedly provided to M.F. on or about November 12, 2000.

8. On or about March 1, 2001, **CLARK MITCHELL** signed a Medicare superbill that falsely indicated that Medicare beneficiary M.F. received an intermediate medical examination that day.

9. On or about April 27, 2001, **CLARK MITCHELL** and his co-conspirators caused the submission of a false claim to Medicare on behalf of CenterOne, seeking reimbursement for an intermediate medical examination purportedly provided to M.F. on or about March 1, 2001.

Medicare Beneficiary G.S.

10. On or about January 4, 2001, **CLARK MITCHELL** signed a Medicare superbill that falsely indicated that Medicare beneficiary G.S. received a comprehensive medical examination that day.

11. On or about March 2, 2001, **CLARK MITCHELL** and his co-conspirators caused the submission of a false claim to Medicare on behalf of CenterOne, seeking reimbursement for a comprehensive medical examination purportedly provided to G.S. on or about January 4, 2001.

Medicare Beneficiary M.P.

12. On or about November 16, 2000, **CLARK MITCHELL** signed a Medicare superbill that falsely indicated that Medicare beneficiary M.P. received an extended medical examination that day.

13. On or about December 20, 2000, **CLARK MITCHELL** and his co-conspirators caused the submission of a false claim to Medicare on behalf of CenterOne, seeking reimbursement for an extended medical examination purportedly provided to M.P. on or about November 16, 2000.

All in violation of Title 18, United States Code, Section 371.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

ANDREW K. LEVI
ASSISTANT UNITED STATES ATTORNEY

RYAN DWIGHT O'QUINN
SPECIAL ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA
vs.

CLARK MITCHELL,

Defendant.
_____/

CASE NO. 06-20665-CR-HUCK/SIMONTON(S)

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

New Defendant(s) Yes X No ____
Number of New Defendants 1
Total number of counts 2

Court Division: (Select One)

X Miami ____ Key West
____ FTL ____ WPB ____ FTP

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

FILED by _____ D.C.
MAG. SEC.
DEC 22 2006
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. • MIAMI

3. Interpreter: (Yes or No) No
List language and/or dialect _____

4. This case will take 0 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

	(Check only one)		(Check only one)	
I	0 to 5 days	X	Petty	
II	6 to 10 days		Minor	
III	11 to 20 days		Misdem.	
IV	21 to 60 days		Felony	X
V	61 days and over			

6. Has this case been previously filed in this District Court? (Yes or No) Yes
If yes:
Judge: Huck Case No. 06-20665- CR-HUCK
(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No) No
If yes:
Magistrate Case No. _____
Related Miscellaneous numbers: _____
Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the U.S. Attorney's Office prior to April 1, 2003? ____Yes X No

8. Does this case originate from a matter pending in the U. S. Attorney's Office prior to April 1, 1999? ____ Yes X No
If yes, was it pending in the Central Region? ____ Yes ____ No

9. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? ____ Yes X No

10. Does this case originate from a matter pending in the Narcotics Section (Miami) prior to May 18, 2003? ____ Yes X No

Andrew K. Levi

ANDREW K. LEVI
ASSISTANT UNITED STATES ATTORNEY
Court Identification No. A5500806

*Penalty Sheet(s) attached

REV.1/14/04

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

BOND RECOMMENDATION

DEFENDANT: **Clark Mitchell**

$1,000,000 Personal Surety
(Surety) (Recognizance) (Corp. Surety) (Cash) (Jail)
(CSB) (No Bond) (Warrant) (Summons) (Marshal's Custody)

By: _____
Andrew K. Levi
ASSISTANT UNITED STATES ATTORNEY

Last Known Address: _____

_____

_____

What Facility: Designated to FPC Pensacola

Currently on a Hold at FDC Miami

Agent(s): FBI **S/A Channin Waterman and S/A Roy Van Brunt III**
(FBI) (SECRET SERVICE) (DEA) (IRS) (CUSTOMS) (**OTHER**)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: Clark Mitchell

Case No: 06-20665-CR-HUCK/SIMONTON(s)

Count # 1:

Securities Fraud

15 U.S.C. § 78j(b), 78ff(a) and 17 C.F.R. Section 240.10b-5

*** Max.Penalty:** 10 Years

Count # 2:

Conspiracy to Commit Health Care Fraud

18 U.S.C. § 371

*** Max.Penalty:** 5 Years

Count # :

***Max. Penalty:**

Counts # :

***Max. Penalty:**

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**